



\*82-SBE-217\*

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)  
STEVEN T. BURNS, et al. )

Appearances:

For Appellants: A. J. Porth

For Respondent: Mark McEvilly  
Michael E. Brownell  
Counsel

O P X N I O N

These appeals are made pursuant to section 18593 of the Revenue and Taxation Code from the actions of the Franchise Tax Board on the protests of Steven T. Burns, et al., against proposed assessments of additional personal income-tax and penalties in the total amounts and for the year as follows:

<u>Appellant</u>	<u>Year</u>	<u>Proposed Assessment Including Penalties</u>
Steven T. Burns	1979	\$3,219.50
Scott Gillis	1979	\$ 691.50
Louis B. Hall	1979	\$2,900.05
Arthur G. Horton, Jr.	1979	\$2,611.03
Robert B. Rodenbaugh	1979	\$5,343.92

Appeals of Steven T. Burns, et al.

These appeals have been consolidated for hearing and disposition because of appellants' common **representation** and the presence of substantially identical factual **situations**. The common issue presented by these **appeals** is whether appellants have established error in respondent's proposed assessments of additional personal income tax or in the penalties assessed for the year in issue.

Appellants refused to file California income tax returns after notice and demand from respondent. Thereafter, respondent issued the subject proposed assessments, based upon income information received from the California Employment Development Department.

It is settled law that respondent's determinations of tax and penalties, other than the fraud penalty, are presumptively **correct**, and the burden rests upon the taxpayer to prove them erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) **After reviewing the records of these appeals, we can only conclude that no such proof has been presented here. In support of the position that they are neither statutorily nor constitutionally subject to the California personal income tax, appellants have merely advanced a number of the same arguments-which we rejected in the Appeals of Fred R. Dauberger, et al., decided by this board on March 31, 1982. We see no reason to depart from that decision in this appeal.**

On the basis of the evidence before us, we can only conclude that respondent correctly computed appellants' tax liability, and that the imposition of penalties was fully justified. Respondent's actions in these matters will, therefore, be sustained.

Finally, we note that appellants Arthur G. Horton, Jr., and Robert B. Rodenbaugh have previously brought appeals before this board in which they made the same frivolous arguments rejected here. (Appeal of Arthur G. Horton, Jr., Cal. St. Bd. of Equal., Jan. 5, 1982; Appeal of Robert B. Rodenbaugh, Cal. St. Bd. of Equal., March 30, 1981.) As we stated in the Appeals of Robert R. Aboltin, et al., decided on June 29, 1982, "[t]o pursue an appeal under such circumstances can only be construed as an attempt to obstruct and delay the appellate review process." We find that the aforementioned two appellants instituted and have pursued their appeals merely for the purpose of delay. **Accordingly, pursuant to Revenue**

Appeals of Steven T. Burns, et al.

. and Taxation Code section 19414,<sup>1/</sup> a penalty in the amount of five hundred dollars (\$500) shall be imposed against each of them.

1/ Section 19414 provides as follows:

Whenever it appears to the State Board of Equalization or any court of record of this state that proceedings before it under this part have been instituted by the taxpayer merely for delay, a penalty in an amount **not** in excess of five hundred dollars (\$500) shall be imposed. Any penalty so imposed shall be paid upon notice and demand from the Franchise Tax Board and shall be collected as a tax.

Appeals of Steven T. Burns, et al.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the actions of the Franchise Tax Board on the protests of Steven T. Burns, et al., against proposed assessments of additional personal income tax and penalties in the total amounts and for the year as follows:

<u>Appellant</u>	<u>Year</u>	<u>Proposed Assessment Including Penalties</u>
Steven T. Burns	1979	\$3,219.50
Scott Gillis	1979	\$ 691.53
Louis B. Hall	1979	\$2,900.05
Arthur G. Horton, Jr.	1979	\$2,611.03
Robert B. Rodenbaugh	1979	\$5,343.92

be and the same are hereby sustained, and that a \$500 delay penalty under section 19414 be imposed against both Arthur G. Horton, Jr. and Robert B. Rodenbaugh and the Franchise Tax Board shall collect the same.

Done at Sacramento, California, this 21st day of September, 1982, by the State Board of Equalization, with Board Members, Mr. Bennett, Mr. Collis, Mr. Dronenburg, and Mr. Nevins present,.

*William L. Burns* Chairman  
*Richard Klein* Member  
*Ernest Dronenburg* Member  
*Ray Bennett* Member  
*John Nevins* Member